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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
CC:PSI:B02
PLR-148265-09

Date:
March 25, 2010

Estate =

Decedent =
1

Decedent
2

Trust =

Date 1 =

Date 2 =

$$\underline{X} =$$

Foundation

Dear _____ :

This responds to a letter dated October 27, 2009, submitted on behalf of Estate and Trust by their authorized representative, requesting a ruling under § 691 of the Internal Revenue Code.

The information submitted states that Decedent 1 died on Date 1. Decedent 1 was the owner of an individual retirement account (IRA). The named beneficiary of the IRA was Decedent 2. Decedent 2 converted Decedent 1's IRA to an inherited IRA for Decedent 2's benefit. Decedent 2 did not designate a beneficiary for the inherited IRA.

Decedent 2 died on Date 2. Decedent 2's will provides that Decedent 1's and Decedent 2's residuary probate property should be added to Trust. Trust provides that upon Decedent 2's death, a specific gift in the amount of X be paid to a specific legatee. Trust provides that after the specific distribution is made, the residuary of the trust is to be distributed to Foundation. Trust provides that Trustee is authorized to distribute income and principal in cash or in kind, or partly in each, and to allocate or distribute undivided interests or different assets or disproportionate interests in assets.

Decedent 2 was also the owner of an IRA. The named beneficiary of the IRA did not exist at the time of Decedent 2's death and, therefore, Estate was designated, by default, as the beneficiary of the IRA. The trustee of Trust and Personal Representative of Estate propose to fund the residuary bequest by assigning Decedent 1's and Decedent 2's IRAs to Foundation in satisfaction of its residuary share of Trust. Estate and Trust represent that Trust has sufficient assets to satisfy the specific legatee without utilizing the IRA proceeds.

Section 691(a)(1) provides that the amount of all items of gross income in respect of a decedent (IRD) which are not properly includible in respect of the taxable period in which falls the date of the decedent's death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of: (A) the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate; (B) the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent; or (C) the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

Section 691(a)(2) provides that if a right, described in § 691(a)(1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, the amount by which any consideration for the transfer exceeds such fair market value. For purposes of § 691(a)(2), the term "transfer" includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such

amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

Section 1.691(a)-4(b) of the Income Tax Regulations provides that if the estate of a decedent or any person transmits the right to IRD to another who would be required by § 691(a)(1) to include such income when received in his gross income, only the transferee will include such income when received in his gross income. In this situation, a transfer within the meaning of § 691(a)(2) has not occurred.

Section 1.691(a)-4(b)(2) provides that if a right to IRD is transferred by an estate to a specific or residuary legatee, only the specific or residuary legatee must include such income in gross income when received.

Section 1.691(a)-4(b)(3) provides that if a trust to which is bequeathed a right of a decedent to certain payments of income terminates and transfers the right to a beneficiary, only the beneficiary must include such income in gross income when received. If the transferee described in § 1.691(a)-4(b)(2) or (3) transfers his right to receive the amounts in the manner described in § 1.691(a)-4(a), the principles contained in § 1.691(a)-4(a) are applied to such transfer. On the other hand, if the transferee transmits his right in the manner described in § 1.691(a)-4(b), the principles of § 1.691(a)-4(b) are again applied to such transfer.

Rev. Rul. 92-47, 1992-1 C.B. 198, holds that a distribution to the beneficiary of a decedent's IRA that equals the amount of the balance in the IRA at the decedent's death, less any nondeductible contributions, is IRD under § 691(a)(1) that is includible in the gross income of the beneficiary for the tax year the distribution is received.

Based solely on the facts and representations submitted, we conclude that the assignment of the IRAs to Foundation in satisfaction of its share of the residue of Estate and Trust will not be a transfer within the meaning of § 691(a)(2). Only Foundation will include the amount of IRD of the IRAs in its gross income when the distribution or distributions from the IRAs is received by Foundation.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Pursuant to a power of attorney on file with this office, a copy of this letter is being forwarded to Trust and Estate's authorized representative.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Melissa C. Liquerman
Branch Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes